

Fairfax County Small Business Commission
Small Business, Legislative and Policy News
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July 2016 Newsletter

Supreme Court Rules in Favor of Veteran Owned Small Businesses in Government Contracts Case

On June 16, 2016 in the matter of *Kingdomware Technologies Inc. v. United States*, the Supreme Court of the United States held that the federal government has a duty to grant contracts to small businesses run by veterans given certain conditions. The legal controversy focused on whether the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Veterans Act of 2006) created a Congressional mandate for the Department of Veteran Affairs (DVA) to extend preferential treatments to veteran owned small businesses, if two such firms bid for the same contract at reasonable prices.

The plaintiff, Kingdomware Technologies, Inc., filed suit in 2012, after the DVA awarded a contract Kingdomware had sought to procure, to a non-veteran owned competitor. In its suit, Kingdomware argued that Veterans Act of 2006 § 8127(d) created an obligation for the DVA to use the “Rule of Two” when awarding contracts to small businesses. Under the Rule of Two, the government “shall award” contracts to veteran owned small businesses, provided that: 1) at least two veteran owned small businesses are likely to submit offers, and 2) the award can be made at a fair and reasonable price that offers best value to the United States.

Kingdomware argued that the Rule of Two requires that, if the above conditions are met, the DVA must award contracts to a veteran owned small business. The DVA argued that so long as it meets its set asides for veteran owned businesses, it has discretion on whether to use the Rule of Two when awarding contracts.

In a unanimous holding by Justice Thomas, the U.S. Supreme Court agreed with Kingdomware. The Court held that the use of the word “shall” in the Veterans Act of 2006 was intended by Congress to create a mandatory duty upon the DVA to use the Rule of Two in awarding all contracts, regardless of whether the DVA has met its goals for contracts with small businesses. Furthermore, the Court held that “all” contracts includes orders placed via the Federal Supply Schedule (FSS). The FSS allows government agencies to place orders with a list of suppliers with whom the government has already negotiated contracts. The Court held that each order placed under the FSS was a separate contract, and thus must comply with the Rule of Two. However, the Court expressly refrained from ruling on what level of search was required by the DVA to fulfill the Rule of Two requirement, leaving that issue unresolved.

Regardless, Virginia is poised to reap exceptional benefits from this decision. With 12.4% of small businesses in the state owned by military veterans, Virginia is a national leader for veteran owned firms. Fairfax County alone is the home of dozens of veteran owned small businesses. The ruling creates a mandate for the DVA to prioritize these firms when awarding contracts, while also expanding the number of contracts offered to veteran owned small businesses. With its high proportion of veteran owned firms, Virginia and Fairfax County small businesses stand to benefit immensely from this ruling.

For further information please see:

http://www.supremecourt.gov/opinions/15pdf/14-916_6j37.pdf

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